

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

BILLY LEE SEXTON,

Plaintiff,

v.

UNKNOWN,

Defendant.

No. 2:22-CV-1642-DMC-P

**ORDER**

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a "... short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it

1 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege  
2 with at least some degree of particularity overt acts by specific defendants which support the  
3 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
4 impossible for the Court to conduct the screening required by law when the allegations are vague  
5 and conclusory.

6 Plaintiff names “Custody Staff at Vacaville State Prison” as defendants to this  
7 action. See ECF No. 1. No specific individual defendants are named or mentioned in the  
8 complaint. See id. Plaintiff alleges that “staff at Vacaille” severe beat him. See id.

9 Plaintiff’s complaint suffers a fatal flaw in that he has not linked any of the named  
10 defendants to the alleged use of excessive force. To state a claim under 42 U.S.C. § 1983, the  
11 plaintiff must allege an actual connection or link between the actions of the named defendants and  
12 the alleged deprivations. See Monell v. Dep’t of Social Servs., 436 U.S. 658 (1978); Rizzo v.  
13 Goode, 423 U.S. 362 (1976). “A person ‘subjects’ another to the deprivation of a constitutional  
14 right, within the meaning of § 1983, if he does an affirmative act, participates in another's  
15 affirmative acts, or omits to perform an act which he is legally required to do that causes the  
16 deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).  
17 Vague and conclusory allegations concerning the involvement of official personnel in civil rights  
18 violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).  
19 Rather, the plaintiff must set forth specific facts as to each individual defendant’s causal role in  
20 the alleged constitutional deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

21 In this case, Plaintiff alleges excessive force but does not specifically say who was  
22 involved. Plaintiff will be provided an opportunity to amend.

23 Because it is possible that the deficiencies identified in this order may be cured by  
24 amending the complaint, Plaintiff is entitled to leave to amend prior to dismissal of the entire  
25 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is  
26 informed that, as a general rule, an amended complaint supersedes the original complaint. See  
27 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to  
28 amend, all claims alleged in the original complaint which are not alleged in the amended

1 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if  
2 Plaintiff amends the complaint, the Court cannot refer to the prior pleading in order to make  
3 Plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be  
4 complete in itself without reference to any prior pleading. See id.

5 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the  
6 conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See  
7 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how  
8 each named defendant is involved, and must set forth some affirmative link or connection  
9 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d  
10 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

11 Finally, Plaintiff is warned that failure to file an amended complaint within the  
12 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at  
13 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply  
14 with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule 41(b).  
15 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff's complaint is dismissed with leave to amend; and
- 18 2. Plaintiff shall file a first amended complaint within 30 days of the date of  
19 service of this order.

20  
21 Dated: November 9, 2022



22 DENNIS M. COTA  
23 UNITED STATES MAGISTRATE JUDGE  
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